

a representation of a small subset his overall, fully signed off and authorized investment strategy.

Hawai'i – in 2009 -- Nolan's attorney deposed Northern Trust banker Aaron Mascarella (March 24, 2009) – one month before the *Nolan v. Kenner* arbitration.

**Northern Trust Banker Mascarella confirmed that he had been in independent communication with Nolan between 2003-2006** (the first four [4] years of Nolan's LOC). This contradicted Nolan's 2009 testimony that he was not aware of his LOC (unless he was already suffering from **CTE**) (*Day 1 arbitration Tr.84*):

*Q: Did he [Kenner] discuss with you securing a line of credit for the Hawaii investment?*

*A [Nolan]: No.*

Nolan verified every one of his 30+ signed Northern Trust LOC documents during the arbitration – but testified that he could not remember any of them (*2009 arbitration Day 1 testimony*).<sup>41</sup> Nolan also alleged during his 2009 testimony that he did not know who was going to be in charge of the Hawai'i partners or even how it was going to be operated (*Day 1 arbitration Tr.82-83*):

*Q. When Mr. Kenner discussed the Hawaii project with you did he tell you anything about using the money from Hawaii for any purposes other than developing land in Hawaii?*

*A [Nolan]: No.*

*Q. Did he tell you anything about how the Hawaii investment was being operated?*

*A [Nolan]: No.*

*Q. Did you know that Mr. Kenner was running the Hawaii investment?*

*A [Nolan]: No.*

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<sup>41</sup> Nolan's entire Day 1 testimony in 2009 presented nearly 100 occurrences of not being able to remember anything that occurred in his personal or professional life.

But – without knowing anything -- Nolan invested anyhow with the one person he espoused to trust in the world; Kenner:

*Q Aside from being a business client of his, would you say that from time to time you would be willing to socialize with him?*

*A [Nolan]: Absolutely. Considered him a great friend, almost like a brother.*

*Q You trusted him?*

*A [Nolan]: **Very much.***

Nolan's attorney ignored Mascarella's "full knowledge confirmations" during the pre-arbitration deposition (only weeks earlier) -- and allowed Nolan's 2009 perjured testimony to proceed without corrections.

Nevertheless – **Northern Trust banker Aaron Mascarella** confirmed "*under oath*" pre-arbitration [Ex.Z63]:

[Mascarella deposition -- Page 23]:

*Q. Okay. Now, with regard to the line of credit account, who was authorized to make transfers out of that line of credit?*

*A [Mascarella]: Owen and Phil.*

*Q. Was there any limitation on Mr. Kenner's ability to transfer money out of the account?*

*A [Mascarella]: No. It was -- Yes. I'm sorry. It was -- The proceeds were only to go to Little Isle Ventures, Little Isle IV, I think, if I remember correctly. He signed -- Owen Nolan signed a bank authorization or an authorization letter to the bank authorizing Phil Kenner to transfer money from the line of credit into the Little Isle IV account.*

[Mascarella deposition -- Page 24]:

*Q: During the time period from -- From the time you opened the Nolan account until the end of 2006, did you have conversations with Mr. Nolan concerning the line of credit?*

*A [Mascarella]: Conversations -- I spoke to Owen infrequently. I've only had brief conversations with him. And my guess is that it was only relating to the payments, that the payments were being made or not being made. There was a few times when the payments were slow, that we sent out default letters, which*

*probably -- You know, I can't remember every conversation I had with him but I assume he might have responded to one of those default letters.*

[Mascarella deposition -- Page 34]:

*Q. At some point, was a -- And I'm talking about the 2004 to 2005 time frame. Was a line of credit opened up for Little Isle IV?*

*A [Mascarella]: I believe so. That would -- It's my understanding the answer is yes.*

*Q. And do you recall who were signatories on that line of credit?*

*A [Mascarella]: **I wasn't involved at that time on the lending side, so I don't know. I know that if it was set up in the business name -- I would only be speculating. So I don't know.***

[Mascarella deposition -- Page 35]:

*A [Mascarella]: We have a separate commercial lending department and a lender there [Ed Wilson] would have established the relationship on the lending side.<sup>42</sup>*

*Q. And during this time period, can you remember who would have been in that position?*

*A [Mascarella]: I don't. It changed a couple of times during when their relationship was initially started.*

- Obviously -- Mascarella never concealed information from his client, Owen Nolan, after verifying he spoke with Nolan on the phone about his LOC between 2003-06.
- Nolan's "epic memory failure" cannot make Kenner criminally liable for what his-own Northern Trust banker verified "under oath" – just because of Nolan's

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<sup>42</sup> Ed Wilson –the Head of the Northern Trust Bank Lending Department – signed all Northern Trust documents; *unknown to Mascarella (in the 2015 Northern Trust Bank subpoena).*

- *The government presented no first hand evidence from the people who handled the Northern Trust LOC accounts...that they were ever instructed by Kenner to "conceal" information from their own clients (governed by the 2001 Patriot Act)...*